

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of Lowry
Food Market
WIC Vendor No. W7003

FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on May 21, 1998, in St. Paul.

Appearing on behalf of the Department of Health was Wendy Willson Legge, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103.

Appearing on behalf of Lowry Food Market was Bassem Kablaoui, its owner. Mr. Kablaoui appeared without benefit of counsel.

The record closed at the end of the hearing on May 21.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner of Health shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Commissioner of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440.

STATEMENT OF ISSUE

Whether the Department properly disqualified Lowry Food Market from participation in the WIC Program as a vendor for a period of three years because of four violations of the vendor agreement.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Lowry Food Market is a retail food store located at 628 Lowry Avenue North, in Minneapolis. Pursuant to a vendor agreement, which absent disqualification would have expired on April 30, 1998, Lowry was authorized by the Department to participate in the WIC program as a vendor.

2. As a result of an undercover investigation, the Department disqualified Lowry from participation in the WIC program for three years effective April 29, 1998. Lowry was notified of this disqualification by letter dated April 14, 1998 (Ex. 23), and promptly filed an appeal on April 15, 1998 (Ex.24). The Department issued a Notice of and Order for Hearing on May 7, a prehearing conference took place on May 15, and the hearing took place on May 21.

3. During the winter and spring of 1998, the Department conducted an intensive investigation of the WIC program in Hennepin County. Every retail food store in the county was investigated.

4. On February 3, 1998, an undercover investigator entered Lowry Food Market and purchased food using a WIC voucher. The voucher (Ex. 9) authorized the purchase of the following:

- 36 ounces (or less) of WIC-approved cereal
- 1 gallon container of fortified fluid milk
- 1 pound WIC-approved domestic cheese
- 1 dozen eggs
- 2 cans of 46-ounce 100% fruit juice (or) 4 cans of 6-ounce 100% frozen fruit juice

The voucher indicated that the first day of use was February 4, 1998.

The undercover agent purchased the following authorized items:

- 1 gallon of skim milk
- 1 dozen eggs

The undercover agent also purchased the following unauthorized item with the coupon:

- 2 11-ounce boxes of Kellogg's Froot Loops
- 2 cans of Hi-C drink

5. When the undercover agent presented the voucher to the cashier, the cashier did not write the price of the goods purchased onto the voucher at any time. The cashier did ask the agent to sign the voucher, but did not check the signature against the signature on the WIC ID folder (Ex. 6). The cashier did identify himself as the owner of the store (later identified as Bassem Kablaoui) and gave the agent a business card (Ex. 8), indicating that if he could be of any assistance to her, he would be happy to do so. She did not identify herself as an undercover agent.

6. The WIC voucher which was used at the store on February 3 was presented for payment on or about February 10 (Ex. 5). It was filled in for \$25.74. This was an incorrect figure. Even if the Froot Loops and Hi-C had been authorized foods (which they were not), the food value for all of the items obtained by the undercover investigator was only \$16.24. Exs. 12, 13 and 26. Therefore, there was an overcharge of \$9.50 on that voucher.

7. Two days later, on February 5, 1998, Freddy Marsh-Lott, a WIC compliance specialist, visited the Lowry Food Market. He verified the prices of the items purchased on February 3, completed a competitive price check worksheet, and

spoke with Pedro Bustamantee, the manager on duty at the time. They discussed the required signature procedures, including having the price entered on the voucher before it is presented to the customer for signature, being sure to verify the WIC customer's signature on the voucher with the signature on the identification folder, appropriate costing for WIC foods, being sure to allow WIC customers to purchase only the WIC-allowed foods specified on the voucher, and the voucher dates of use. Bustamantee signed a verification form, indicating that these matters had been discussed and explained. Ex. 15.

8. On March 18, 1998, Marsh-Lott sent a letter to Lowry's owner, Basam Kablaoui, indicating that the Department has reason to believe that the store had violated four specific portions of the vendor agreement, listing the penalties for violations, and urging Kablaoui to discuss them with cashiers to be sure there would be no future violations. The letter ended with a "if we can provide any assistance to you in training your store cashiers on proper WIC program requirements, please do not hesitate to contact me at 623-5685". Ex. 16.

9. Almost immediately, on March 20, Kablaoui sent a letter to Marsh-Lott, acknowledging that the store did have some problems in the way the WIC program was being handled, enclosing a set of instructions given to employees and customers, and ending with a request for training as follows: "Finally, we appreciate if you could arrange training session for our employees in your department or our store". Ex. 17. Upon receipt of this letter, Marsh-Lott reviewed the attached instruction and determined that this store did have a good idea of what was required. He decided that, in light of the Department's heavy work in the Hennepin County investigation, he would be unable to provide any additional training to Lowry Food Market.

10. On March 31, 1998, the same undercover investigator again entered Lowry Food Market and purchased two approved items: 1 gallon of skim milk; 1 dozen eggs. She also purchased two unapproved items: two 11-ounce boxes of Froot Loops and two 12-ounce cans of Old Orchard grape juice cocktail. The cashier was the same as her first visit, Bassem Kablaoui. When she presented her WIC voucher, he did require her to sign it but he did not enter a price on it. He also asked for her WIC identification folder, which she "flashed" at him. She held it approximately two feet away from him for a very brief period of time. He said, "okay", but did not actually verify the signature in the folder with the signature on the voucher. Ex. 18.

11. When the voucher was cashed on April 6, the amount of \$24.65 was written into it. That is incorrect. Even if the Froot Loops and Old Orchard grape juice cocktail are counted as authorized foods (which they should not be), the food value was only \$15.84. Since the redemption amount was specified as \$24.65, there was an overcharge of \$8.81. Exs. 27 and 25.

12. On April 14, the Department directed a letter to Bassem Kablaoui indicated that the following violations had occurred on two separate occasions:

- providing unauthorized foods in exchange for a WIC voucher

- charging the WIC program for foods not received by the WIC customer
- failing to enter the dollar amount of the purchase on a WIC voucher at the time the WIC voucher was used.
- failing to verify that the WIC customer's signature matched a signature on the WIC identification folder.

The letter notified Kablaoui that Lowry Food Market's status as a WIC program vendor was terminated, effective April 29, 1998. After an appeal was filed, the Notice of and Order for Hearing was issued on May 7. It specified the same four violations, but noted that disciplinary action was being taken as a result of the second violation (the March 31 incident).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. § 14.50, 7 C.F.R. § 246.18, and Minn. Rule pt. 4617.0100, subp. 1. The Notice of Hearing was proper in all respects and the Department has complied with all other substantive and procedural requirements of law or rule.

2. Minn. Rule pt. 4617.0085 provides sanctions for noncompliance with the WIC program rules. It provides disqualification for six months for the first offense and 12 months for each subsequent offense for a vendor who enters the price of an authorized food on a voucher after the participant has counter-signed it [and] fails to verify that the voucher is redeemed only by a person listed on the identification folder. The rule also provides for disqualification for 12 months for the first offense and 24 months for each subsequent offense for a vendor who does not enter the dollar amount of the purchase on a voucher at the time the voucher is used to buy food, exchanges cash or unauthorized food or other items for a voucher, or charges the program for foods not received by a participant. Subpart 2 does provide that disqualifications for multiple abuses are successive, except that the total length of a disqualification or successive disqualifications must not exceed three years.

3. In this case, the Department correctly computed the disqualification at three years, as a result of the above limitation.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Health AFFIRM the disqualification of Lowry Food Market as an eligible vendor in the WIC program for a period of three years from April 29, 1998.

Dated this 22nd day of June 1998.

ALLAN W. KLEIN
Administrative Law Judge

Reported: Taped